

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on February 15, 2001 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 19, 2/9/2001; SB 424,
2/12/2001; SB 371, 2/9/2001
Executive Action: SB 243; SB 131; SB 319; SB
387; SB 327; SB 424; SB 19; SB
371

HEARING ON SB 19

Sponsor: SENATOR MIKE HALLIGAN, SD 34, Missoula

Proponents: Gary Feland, Public Service Commission

Matthew Leow, Montana Public Interest Research Group
Bob Vogel, Montana School Boards Assn.
Patrick Judge, Montana Environmental Information
Center
Tom Schneider, Self

Opponents: None

Opening Statement by Sponsor:

SENATOR MIKE HALLIGAN, SD 34, Missoula, stated that the bill is to deal with the uncertainty of supply with respect to electric generation and address how the transition to customer choice should be handled. On page 5, lines 7-8, the transition period is extended to 2004. This bill simply gives the Public Service Commission (PSC) the possibility to look at the market and competition to decide whether customers will, in fact, benefit by the move in transition. They will have the opportunity to delay choice until July 1, 2006.

Proponents' Testimony:

Gary Feland, Public Service Commission, declared that the legislation provides the PSC with the necessary flexibility to extend the transition period by two years. They felt it was important to keep the bill alive.

Matthew Leow, Montana Public Interest Research Group, indicated that the Montana market will not be ready for full choice in a year and a half. This is a good, straightforward bill and should be passed.

Bob Vogel, Montana School Boards Assn., supported the bill because it makes sense to extend the transition period and give some certainty to an uncertain energy market. He was concerned about the ability for individuals who have gone into the deregulated market and contracted for energy to come back into a regulated market.

Patrick Judge, Montana Environmental Information Center, urged the committee's support.

Tom Schneider, Self, supported the bill due to the simplicity of extending the transition period.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR TOM ZOOK wanted clarification that the rate would remain constant throughout the transition period. **SENATOR HALLIGAN** said that the rate would not remain the same. After July 1, 2002, customer choice, in terms of choosing an electric supplier, would remain constant.

SENATOR ROYAL JOHNSON noted that there will be two more legislative sessions between now and then. He wondered why the legislature should do something now instead of waiting until 2002 or 2005. **SENATOR HALLIGAN** felt it was important that the legislature approve an understanding of the playing field.

SENATOR MACK COLE commented about industrial customers coming back in the market. **SENATOR HALLIGAN** exclaimed that he didn't want to muddle the bill with the industrial issue.

SENATOR JOHNSON asked what the bill does for the legislature. **Will Rosquist, PSC**, exhorted that the bill says the PSC is entrusted with the role of dealing with the situation that will arise in July 2002 when the current rate moratorium expires. The PSC will have to work with Montana Power Company (MPC) and other interested parties to decide how electricity will be supplied to customers and at what price. **SENATOR JOHNSON** wondered if **Mr. Rosquist** had read the suggested rules from MPC to the PSC as to how the period is handled based on requests and requirements of SB 243. **Mr. Rosquist** professed that he had read the rules contained in their default supply plan, which was submitted to the PSC in response to an order, as well as the gray bill amendments to SB 243. They parallel each other closely. **SENATOR JOHNSON** implored how this bill would fit in with that situation since the PSC has been requested by the legislature to do the follow-up in both situations. **Mr. Rosquist** thought that if this legislation were to pass and SB 243 did not, the PSC would be left with dealing with MPC's plan, the PSC would proceed to evaluate that plan, involve the necessary parties, and come to a resolution. **SENATOR JOHNSON** inquired whether the PSC had written any of their own rules for this situation. **Mr. Rosquist** cited that the PSC had been working continuously on the broad issue of default supply since 1999. Some rules have been adopted, including one that says MPC is essentially the default supplier.

SENATOR MIKE TAYLOR wanted clarification on why the PSC needed the legislation. **Mr. Rosquist** stated that the PSC had the necessary rule-making authority. One of the benefits of the bill is with regard to the ability of the PSC to further extend the transition period to 2006. That is the date when all MPC's customers must have the option of choosing an alternative supplier.

SENATOR TAYLOR understood the extension, but wasn't sure about some of the other technicalities. **Todd Everts** explained that with the extension of the transition date, there were other things that needed to be extended in terms of dates.

Closing by Sponsor:

SENATOR HALLIGAN declared that as we move along to 2004 and 2006, the PSC could put together a very realistic phase-in of how the transition will take place and over what period of time.

HEARING ON SB 424

Sponsor: **SENATOR BILL GLASER, SD 8, Huntley**

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SENATOR BILL GLASER, SD 8, Huntley, cited that his vision was that there would be default suppliers. This bill is about giving the PSC the authority to set the reward for default suppliers.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:

Gary Feland, Public Service Commission, was available for questions.

Patrick Judge, Montana Environmental Information Center, pointed out that this legislation is inconsistent with SB 243. It would also be unnecessary to have a situation where default suppliers would be making a profit.

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Questions from Committee Members and Responses:

SENATOR DON RYAN wondered how the costs that would be included on page 1, lines 25-30 would compare to what is currently allowed by the PSC. **Mr. Rosquist** asserted that the PSC doesn't have any direct experience in terms of regulating default supply. In the

role that a public utility plays to provide electricity supply service, most of those costs are allowable by the PSC. One distinction would be with respect to the value-added service fee. The way the PSC has traditionally regulated a utility that owns generation plants, is the utility is authorized the opportunity to earn a return on the capital investment in that plant. Traditionally, if the utility was just purchasing electricity from another utility, the costs of purchasing that electricity are passed through to the customer's rates.

SENATOR ALVIN ELLIS questioned that, with regard to the value-added service fee, the PSC adopted a rule in December that paralleled it. **Mr. Rosquist** asserted that no rules had been adopted as proposed by MPC. The fee and the rules were proposed, but the PSC had not taken any action.

SENATOR STEVE DOHERTY wanted an explanation of energy risk management costs and a value-added service fee. **Mr. Rosquist** clarified that ancillary services tend to be associated with transmitting power. Energy risk management costs are defined in the gray bill for SB 243 and have to do with purchasing certain financial mechanisms. The value-added service fee, as MPC proposes, is a profit. **SENATOR DOHERTY** asked if an additional profit was being added. **Mr. Rosquist** described two ways of interpreting the language. The reference to including a reasonable return and the following sentences, is that the value-added service fee is intended to be the reasonable return. The way the PSC has traditionally used rate of return applies to capital investments.

SENATOR JOHNSON asked about a previous quote on a certain percentage. **Mr. Rosquist** elaborated that the percentage the PSC authorizes the utility to return is not specified in the law. By looking at a vertically integrated regulated public utility, comparable rates of return by other businesses performing the same functions are looked at. Those are then applied to the public utility.

SENATOR ZOOK implored when the PSC decided to choose the default supplier, whether they had any choice in the matter. **Mr. Feland** indicated that MPC was chosen as the default supplier because when they were trying to write the rules and decide, there were a lot of cities, towns, and others who wanted to be the default supplier. However, after working about a year, nobody applied for the position so MPC was named as the default supplier. There is no rate of return on their electricity supply. MPC did not say no when they were chosen as the default supplier. **SENATOR ZOOK** further questioned as to whether the default supplier was in a breakeven situation. **Mr. Feland** asserted that there would be

the cost of doing business, but there would be no profit on their cost of electricity.

SENATOR TAYLOR was unclear as to what the reasonable rate of return was. **Mr. Feland** declared that MPC just filed for a 14% rate increase on their delivery system. **SENATOR TAYLOR** hypothesized that the PSC was trying to open up the ability to provide more default suppliers if they don't own wires and poles.

SENATOR TAYLOR thought that the intent of the bill was to provide more than one avenue for the default supplier. **SENATOR GLASER** proclaimed that the default supplier should be able to wield on power lines.

Closing by Sponsor:

SENATOR GLASER closed on the bill.

HEARING ON SB 371

Sponsor: **SENATOR KEN TOOLE, SD 27, Helena**

Proponents: **Patrick Judge, Montana Environmental Information Center**
Tom Schneider, Northern Plains Resource Council
Matthew Leow, Montana Public Interest Research Group

Opponents: **Jim Mockler, Montana Coal Council**
Don Allen, Western Environmental Trade Assn.
Haley Beaudry, Columbia Falls Aluminum
Rae Olson, PPL
Dave Wood, Self

Opening Statement by Sponsor:

SENATOR KEN TOOLE, SD 27, Helena, stated that the bill triggers the Major Facility Sighting Act (MFSA) at 400 tons of sulfur dioxide (SO₂) emissions per year and 1,000 tons of nitrogen oxide (NO_x) emissions per year. SO₂ at 810 tons would allow a 24,000 megawatt gas plant before the triggering the MFSA. It would be a 75 megawatt unit at Colstrip 1 and 2, 133 megawatts of pulverized coal, or 241 megawatts at Colstrip 3 and 4. With NO_x at 2,000 tons, it would be 382 megawatts of gas and 247 megawatts of coal.

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Proponents' Testimony:

Patrick Judge, Montana Environmental Information Center, believed that this was a worthy concept and reiterated several of the sponsor's points.

Tom Schneider, Northern Plains Resource Council, submitted written testimony, **EXHIBIT(ens38a01)**.

Matthew Leow, Montana Public Interest Research Group, supported the legislation. He believed the addition of SO₂ and NO_x emissions was a more realistic way of defining a facility.

Opponents' Testimony:

Jim Mockler, Montana Coal Council, submitted and described information on NO_x emissions, **EXHIBIT(ens38a02)**.

Don Allen, Western Environmental Trade Assn., opposed the bill.

Haley Beaudry, Columbia Falls Aluminum, voiced his opposition to the legislation.

Rae Olson, PPL, was opposed to the bill for several reasons. State and federal emission and ambient air quality regulations are already in place to protect human health and the environment. Those must be addressed in any facility's application before the Montana Department of Environmental Quality (DEQ). Selection of 400 tons SO₂ and 1,000 tons NO_x or any addition is excessively open-ended, arbitrary, and without justification. When the Environmental Protection Agency (EPA) comes out with emission standards, there are a host of backup documents stating the need for the standards and the rationale for the selection of the buffers. This is all subject to review by the scientific and engineering community, the public at large, and industry. Therefore, there is no need for implementing another set of emission standards that have no scientific basis.

Dave Wood, Self, urged the committee to table the bill.

Questions from Committee Members and Responses:

SENATOR ZOOK asked if there were any federal standards in this area. **SENATOR TOOLE** believed there are. The numbers used came from an ongoing process through MPC of looking at environmental impacts. He did not look at federal guidelines when developing the numbers.

SENATOR RYAN wanted to know what the effects of NO_x would be. **SENATOR TOOLE** replied that it was a nasty gas. **Debbie Smith, Natural Resources Defense Council**, elaborated that it is one of

the elements regulated by Montana under the federal Clean Air Act and is the leading component of ground level smog.

SENATOR RYAN hypothesized that in three and a half years, the plants in Colstrip could produce the same amount of NO_x pollution as all the fires during the summer of 2000. **SENATOR TOOLE** didn't know where the figures came from that were being referred to.

SENATOR JOHNSON wondered if the sponsor was familiar with the amount of SO₂ emitted from the Exxon refinery in Billings.

SENATOR TOOLE was not familiar with the amount.

SENATOR ELLIS wished for someone else to address a previous question regarding NO_x. **Jim Mockler** responded that NO_x is colorless and does sometimes attach itself to PM₁₀. **SENATOR ELLIS** was curious if it had any relation to ozone. **Mr. Mockler** didn't know. **Patrick Judge** exhorted that ozone is a different molecule.

Closing by Sponsor:

SENATOR TOOLE indicated that following the construction of Colstrip 3 and 4, there was a lot of controversy and unacceptable risk assumed by the company which made them unwilling to look at other generation projects. Those plants were brought on-line in a time of surplus. He asked for favorable consideration.

{Tape : 2; Side : B; Approx. Time Counter : 1}

EXECUTIVE ACTION ON SB 243

Motion: **SENATOR JOHNSON** moved that **AMENDMENT SB024308.ATE, EXHIBIT (ens38a03), DO PASS.**

Discussion:

SENATOR DOHERTY didn't see where consumer protection was in the bill and was concerned with several amendments.

SENATOR WALT MCNUTT wondered if the risk that was attempting to be minimized was only in the electric supplier portion of the operation. **SENATOR JOHNSON** said that was correct.

SENATOR ZOOK asked why the default supplier should be exposed to any risk when acting as an agent on behalf of all of us to provide a service to consumers. **SENATOR DOHERTY** replied that the default supplier could say no. If a reasonable rate of return is allowed and all costs are fully recoverable, he wanted the PSC to

be involved. **SENATOR ZOOK** thought that the default supplier wasn't appointed until shortly before the session began. **SENATOR DOHERTY** said that was true. **SENATOR ZOOK** didn't feel that the default supplier should be exposed to any risk.

SENATOR MCNUTT thought there should be more oversight of the PSC and the Consumer Council.

SENATOR ELLIS understood the amendments in that the default supplier would put together a portfolio of possible energy sources to supply the needs of default customers. Then they would take that, within a limited time period, to the PSC for approval and then choose the best options.

Vote: Motion carried 8-2 with Doherty and Halligan voting no. **SENATOR TAYLOR** was excused.

Motion: **SENATOR MCNUTT** moved that his **AMENDMENT REGARDING PSC AND CONSUMER COUNCIL ROLES, EXHIBIT(ens38a04), DO PASS.**

Discussion:

SENATOR BEA MCCARTHY wanted to know if the amendment would also allow a second default supplier. **SENATOR MCNUTT** didn't believe so. **Mr. Everts** stated that the bill assumes there will be only one default supplier.

SENATOR HALLIGAN was interested in how the amendment would be implemented. **Dennis Lopach, Northwestern Corporation,** stated that there would be discussion, debate, and a protective order would be issued if there was confidential information.

Vote: Motion carried unanimously.

Motion/Vote: **SENATOR HALLIGAN** moved that **AMENDMENT SB024309.ATE, EXHIBIT(ens38a05), DO PASS. Motion carried unanimously.**

Motion: **SENATOR JOHNSON** moved that **SB 243 DO PASS AS AMENDED.**

Discussion:

SENATOR DOHERTY wished for an explanation of page 17, lines 28-29, of the gray bill and why it was a good idea. **SENATOR JOHNSON** exclaimed that it helps out the consumer.

SENATOR RYAN declared that large industrial customers use a tremendous amount of constant power. That power can be consistently bought in a large block of power. The hardest

customers to provide power to are those whose load fluctuates. In order to get a consistent and low price for the customer, as much volatility as possible should be taken out of the overall amount of power the default supplier would have to buy.

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SENATOR TAYLOR wanted clarification that large users should be charged higher rates to subsidize small customers. **SENATOR DOHERTY** suggested that the ability of the PSC to set the lifeline rate for basic necessities for people who need electricity needs to be evaluated.

SENATOR HALLIGAN wondered what the rationale was for eliminating cost based prices. **SENATOR JOHNSON** noted that the amendment came from MPC.

Vote: Motion carried 9-2 with Doherty and Halligan voting no.

EXECUTIVE ACTION ON SB 131

Motion: **SENATOR TAYLOR** moved that SB 131 DO PASS.

Substitute Motion/Vote: **SENATOR TAYLOR** made a substitute motion that **AMENDMENT SB013102.AGP**, **EXHIBIT(ens38a06)**, DO PASS. Substitute motion carried 10-0. **SENATOR MCNUTT** was excused.

Substitute Motion: **SENATOR DOHERTY** made a substitute motion that **AMENDMENT SB013104.AGP**, **EXHIBIT(ens38a07)**, DO PASS.

Discussion:

SENATOR TAYLOR urged the committee not to pass the amendments.

SENATOR HALLIGAN asked if the Department of Administration (DOA) felt the proposed amendments jeopardized the integrity of the bill from an administrative standpoint. **Barbara Ranf, DOA**, had visited with the university system and noted that there were concerns.

SENATOR DOHERTY wished for someone from the university system to respond to the notion that the amendments were one sided. **Dick Crofts** believed that their stance was trying to retain what has been in the statutes, with regard to exemptions for the university system. In the current form, the bill imposes more authority over the university system into the hands of the DOA

than is currently granted by statute and that's why they haven't agreed with it.

Vote: Substitute motion **failed 4-7 with Doherty, Halligan, McCarthy, and Ryan voting aye.**

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 319

Motion: SENATOR COLE moved that **AMENDMENT SB031901.ATE, EXHIBIT (ens38a08), DO PASS.**

Discussion:

Mr. Everts gave a quick overview of the proposed amendments.

SENATOR HALLIGAN wondered why hydro facilities needed to be included. **Art Compton, DEQ**, cited that the state believes there is value in having the opportunity to approach the Federal Energy Regulatory Commission (FERC) during their re-licensing proceeding to assert state interests with respect to water quality issues. Hydro facilities have had the same triggers as other facilities. The amendment would preserve the state's opportunity to intervene before FERC to assert state interests. Although a new hydroelectric dam is not covered, the ones we currently have go through a re-licensing process every 40 or 50 years. **SENATOR HALLIGAN** wished to keep hydro facilities above 50 megawatts under the MFSA because of the tremendous issues associated with land, water qualities, and others.

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Mr. Everts noted that, under current law, if there is a hydro facility under 250 megawatts, the act would not be triggered.

Mr. Compton replied that was correct.

SENATOR TAYLOR believed that a facility over 250 megawatts would affect federal rules and that there was plenty of oversight.

Substitute Motion: **SENATOR HALLIGAN** made a substitute motion that **HYDRO FACILITIES GREATER THAN 250 MEGAWATTS BE INCLUDED IN THE MAJOR FACILITY SITING ACT.**

Discussion:

SENATOR ELLIS was having difficulty picturing what size a 250 megawatt facility would be. **Mr. Compton** declared that 250 megawatts is large hydro facility. **SENATOR ELLIS** exclaimed that slightly more than half of our power is generated by coal or gas.

Vote: Substitute motion **failed 4-6 with Doherty, Halligan, McCarthy, and Ryan voting aye.** **SENATOR TAYLOR** was excused.

Vote: Motion **carried unanimously.**

Motion: **SENATOR COLE** moved that **SB 319 DO PASS AS AMENDED.**

Discussion:

SENATOR DOHERTY inquired why transmission lines were being left in. **SENATOR COLE** proclaimed that large areas are usually encompassed when dealing with transmission and pipelines. **SENATOR DOHERTY** stated that it makes good sense to site transmission lines. He noted that the cost of new coal fired generation is tremendously expensive. **SENATOR COLE** exhorted that the people involved with Colstrip 3 and 4 did a good job and asked a lot of questions to look out for everyone's best interests.

SENATOR ELLIS asserted that Montana cooperatives were ahead of the game in securing more supplies when regulators said they wouldn't be allowed to put the cost of a new project in the rate base. The cost of coal is considerably cheaper than gas.

Vote: Motion **carried 7-4 with Doherty, Halligan, McCarthy, and Ryan voting no.**

EXECUTIVE ACTION ON SB 387

Motion/Vote: **SENATOR HALLIGAN** moved that **SB 387 DO PASS.** Motion **carried 8-0.** **SENATORS RYAN, MCCARTHY, and TAYLOR** were excused.

EXECUTIVE ACTION ON SB 327

Motion/Vote: **SENATOR DOHERTY** moved that **AMENDMENT SB032701.AGH, EXHIBIT (ens38a09), DO PASS.** Motion **carried 8-0.** **SENATORS RYAN, MCCARTHY, and TAYLOR** were excused.

Motion/Vote: **SENATOR DOHERTY** moved that **SB 327 DO PASS AS AMENDED.** Motion **carried 8-0.** **SENATORS RYAN, MCCARTHY, and TAYLOR** were excused.

{Tape : 4; Side : A; Approx. Time Counter : 1}

EXECUTIVE ACTION ON SB 424

Motion/Vote: SENATOR JOHNSON moved that LINE 30 ON PAGE 1 AND LINE 24 ON PAGE 2 BE STRICKEN. Motion carried 8-0. SENATORS RYAN, MCCARTHY, and TAYLOR were excused.

Motion/Vote: SENATOR ELLIS moved that SB 424 DO PASS AS AMENDED. Motion carried 7-1 with Doherty voting no. SENATORS RYAN, MCCARTHY, and TAYLOR were excused.

EXECUTIVE ACTION ON SB 19

Motion/Vote: SENATOR HALLIGAN moved that SB 19 DO PASS. Motion carried 8-0. SENATORS RYAN, MCCARTHY, and TAYLOR were excused.

EXECUTIVE ACTION ON SB 371

Motion/Vote: SENATOR ELLIS moved that SB 371 BE TABLED. Motion carried 6-4 with Doherty, Halligan, McCarthy, and Ryan voting no. SENATOR TAYLOR was excused.

ADJOURNMENT

Adjournment: 6:00 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens38aad)